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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 DONNA KASSMAN, ET AL.,

4 Plaintiffs,

5 v. 11 CV 3743 (LGS)  
6 KPMG, LLP, TELEPHONE CONFERENCE

7 Defendant.

8 -----x  
9 New York, N.Y.  
10 August 13, 2014  
11 Before:  
12 HON. LORNA G. SCHOFIELD,  
13 District Judge  
14 APPEARANCES (VIA TELEPHONE)

15 SANFORD WITTELS & HEISLER, LLP  
16 Attorneys for Plaintiffs  
BY: KATHERINE M. KIMPEL, ESQ.  
17 MAYA SEQUEIRA, ESQ.

18 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
19 Attorneys for Defendant  
BY: STEVEN W. MOORE, ESQ.

20 SIDLEY AUSTIN LLP  
21 Attorneys for Defendant  
22 BY: COLLEEN M. KENNEY, ESQ.

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1 (In chambers)

2 (Case called)

3 THE COURT: Good afternoon, counsel. We are here on  
4 two matters. One is the notice to punitive class members, and  
5 the other is the redaction issue. And, first, I just want to  
6 thank you as much as I possibly can for your submissions on  
7 both issues. I'm not sure I could have efficiently gotten  
8 through the material otherwise, and it was just extremely  
9 helpful and well organized and clear, and you clearly had to  
10 work together to do it and I'm so appreciative.

11 So let me get to the point and tell you where I am on  
12 each of these things. So on the notice, what I plan to do is  
13 to issue an order stating that the notice should be in  
14 substantially the form as the attached document. And what I've  
15 done is basically marked up your submissions to select the  
16 language that I thought was most appropriate. And for the  
17 notice, in most cases, I took the language of one party or the  
18 other. There are very few cases where I made my own edits, but  
19 they were really more editorial than anything else.

20 So what I expect you to do is to use that form of  
21 notice, but, obviously, if you want to change the look of it or  
22 if there's anything that seems to be an error, like a  
23 typographical error or something like that, you're certainly  
24 free to change it. And to the extent that you can agree on any  
25 other change, you're free to do that. I don't want to

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1 hamstring you and say that you have to use my notice because  
2 it's your notice, not my notice.

3 And my decision is that we should use only one notice.  
4 I decided that it would be too confusing to have two notices  
5 and, ultimately, not very efficient or useful.

6 And so with the notice would be a consent-to-join  
7 form, and you'll see that it has two boxes to check with regard  
8 to dates of employment and then biographical information and  
9 then basically a consent. I thought long and hard about  
10 whether to have a "check the box" that related to knowledge or  
11 opportunity to file a claim at an earlier date, but decided  
12 against it because no matter what the box says and no matter  
13 how an employee or former employee responds, it would still be  
14 necessary for the plaintiff to contact the person and get  
15 further information. And so, in the end, I thought it would  
16 not be useful or helpful.

17 So you'll see that the consent-to-join form isn't  
18 really what either of you proposed, but contains language that  
19 both of you proposed. And, again, my ruling is that you use  
20 something substantially in the same form, but if you can agree  
21 on changes to formatting or even to substance, you should feel  
22 free to do that. And I will get that on the docket sheet  
23 today.

24 If you have any questions, just let me know. I guess  
25 the best way to do that is by a letter on ECF and, if

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1 necessary, we'll have another phone conference or I'll just try  
2 and answer it in some informal way.

3               Okay. With respect to the redaction issue, again, I  
4 thought your submissions were just extremely helpful, and I'll  
5 tell you what my ruling is as to category, and then I trust  
6 that you'll be able to implement that regarding the various  
7 documents and specific redactions on the documents.

8               I'm primarily relying on the standard that was  
9 articulated on the lawsuit of Lugosch v. Pyramid Co. of  
10 Onondaga, which is 435 F.3d 110, 119 (2d Cir. 2006), and  
11 basically it's a two-part inquiry. The first is to continue,  
12 and I'm quoting now, "the weight to be given the presumption"  
13 of access to the judicial documents based on "the role of the  
14 material at issue in the exercise of Article III judicial power  
15 and the resultant value of such information to those monitoring  
16 the federal courts."

17              And the way that I interpret that first requirement is  
18 to acknowledge that there is a presumption of access to  
19 judicial documents, and the strength of the presumption depends  
20 on how critical the material was to the decision at issue or  
21 the parties' arguments at issue.

22              The second part of the inquiry under Lugosch is to  
23 weigh the countervailing interests, like privacy interests of  
24 the party resisting disclosure, judicial efficiency, or -- and  
25 I think this one's not particularly relevant -- the danger of

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1 impairing law enforcement.

2                   So Category 1, and I'm using your categories so that  
3 there won't be any confusion and I think I'm using your  
4 language to describe the categories, but in any event, I'm  
5 referring to your Category 1, and that is the information that  
6 relates to Linda O'Donnell and particularly her salary  
7 information.

8                   And my order as to that is that there will be no  
9 redaction of information pertaining to her except to the extent  
10 the parties have already agreed. My reasoning is that  
11 O'Donnell, as we all know, was a plaintiff in the case, is no  
12 longer a plaintiff in the case. At the time that the motion at  
13 issue was filed, she was still in the case. In fact, there is  
14 a reference to her in the opinion, which is published, and  
15 because of all of that, I give significant weight to the  
16 presumption of access to these particular documents.

17                  The countervailing interest is KPMG's privacy  
18 information in her interest, which I view as relatively low,  
19 inasmuch as her name and salary information have long been  
20 published since the filing, in fact, of the second amended  
21 complaint and continuing with the third amended complaint and  
22 then also in my opinion and order. So for all of those  
23 reasons, but primarily because of the importance and  
24 significance at the time of the motion, that information should  
25 not be redacted.

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Category 2 is compensation and performance evaluations of non-parties, and I would order the redactions but as plaintiffs request. And the reason for that is, again, the strength of the presumption of access. The compensation of the non-parties ended up being an important aspect of the defense argument that KPMG made on the motion and KPMG, in fact, introduced this argument and really argued the underlying merits of the case and, in essence, opened the door to those facts when I think it wasn't even really necessary to do that. But having put that in the moving papers, it was an important part of the defense and an important part of what I considered in making the decision. So I think there is a strong presumption for those reasons in favor of access.

I acknowledge that there is some business privacy interest in the same information, but my evaluation is that that privacy interest is not strong enough to outweigh the strong presumption, given the nature of the information and its relevance to both the motion and then to ultimately this action.

Category 3 is client-related information, particularly relating to billing rates and revenue. And my order is that the Category 3 redactions should be as defendant requests. The billing rates and revenue information were not critical to the motion, either the argument or my decision, and KPMG has a strong privacy interest in that information, particular

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1 vis-a-vis competitors, and that privacy interest outweighs the  
2 presumption.

3 Finally, Category 4 is KPMG compensation and  
4 evaluation strategy information, and my order is that the  
5 redactions should be as the defendant requests. This  
6 information, similarly, was not central to the motion or the  
7 resulting order and opinion, and also I would note that KPMG  
8 significantly narrowed the redactions in light of the comments  
9 at our conference, and the redactions are now very limited.

10 The narrative approach or the narrative information  
11 about the general approach that KPMG takes was not proposed to  
12 be redacted, and given the narrowness of the redactions and the  
13 privacy justifications, I find that it's appropriate for those  
14 redactions to be made.

15 So those are my rulings on the two areas. Are there  
16 any questions or any matters that we need to discuss on this  
17 call? Okay. So --

18 MS. KIMPEL: Not from the plaintiffs, your Honor.

19 MS. KENNEY: No, your Honor. This is Colleen Kenney.  
20 No, your Honor. Thank you.

21 THE COURT: Okay. Thank you. So I will do very brief  
22 written orders today, but I think my rulings are clear. Okay.  
23 Thank you very much, counsel.

24 MS. KIMPEL: Thank you, your Honor.

25 MS. KENNEY: Thank you, your Honor.  
(Adjourned)